

4. cellular companies are not unnecessarily delayed by site review.

Under the revised rules of G.O. 159, once the Commission authorizes a utility's initial system, the Commission delegates its authority to local agencies to regulate the location and construction of additional cellular sites. The cellular companies requested and received protection from local agencies. If a cellular company cannot reach a timely agreement with the local jurisdiction, it can appeal to the Commission.

In short, G.O. 159, the ministerial mechanism by which this Commission exercises environmental and safety oversight under CEQA, is meaningless unless its timing requirements are observed or enforced. Neither has occurred. The industry does not comply. In part, matters progressed to where they are today, with massive discrepancies in submissions by cellular companies, because CACDA relied on sworn information to control the quality of advice letters. The reluctance or inability of most permitting agencies to require site removal, and the magnitude of revenues that render cellular companies relatively indifferent to local jurisdictions' available fine levels, contributes to lax or contradictory local enforcement.

The timing of obtaining permits is important. Cellular companies that get necessary permits or approvals after building are establishing a form of "squatter's rights" across California. The environmental impact, even if often de minimus or subject to ministerial local review, cannot legally be evaluated after construction occurs. Notice requirements are bypassed, reducing the potential objections of local residents. Mitigation measures, possible before construction begins, become problematic to enforce after highly localized damage has occurred. The first priority of the cellular companies seems to be expansion, and a corresponding growth in earnings. Observing siting processes is less important: cellular companies are often unwilling to wait even a few days to start building a site in order to satisfy G.O. 159. Their enthusiasm to provide cellular service for Californians is laudable, but many carriers' intra-company efforts towards building and permitting appear disjointed. The sense of permitting breakdown perceived is confirmed by companies' difficulties providing basic information about sites' dates of service, construction, location, and relevant permitting records.

CACDA has prepared a chart at the end of this Summary to tabulate the general extent of partial violations known today. Several qualifications apply.

First, not all sites are analyzed yet: this status report covers 391 sites of 632 in the investigation to date. Some 357 of these sites appear to violate G.O. 159, based on the written evidence

submitted. Yet the information cellular companies have submitted is, in many instances, quite incomplete. CACDA anticipates that cellular companies will provide satisfactory explanations or additional written evidence of compliance for some fraction of these sites. Additionally, this status report excludes the numerous sites within the scope of the investigation for which no Appendix A or B information was submitted. CACDA is still working to quantify and identify such sites. CACDA intends to assist cellular companies in identifying sites subject to this investigation and may request late filed Appendix A or B information.

CACDA cautions against drawing comparisons today between cellular companies because, with the exception of U.S. West, information submitted could be more complete for one company than another, and from subject to subject. (U.S. West made a commendable effort to respond with all the information the Commission requested.) Also, in nearly all instances involving a potential violation of a non-Commission rule relevant to G.O. 159 compliance, CACDA reports that the conduct "can be" a violation of such rules. Due to largely incomplete information, and to provide cellular companies the opportunity to present additional evidence that the rule was met or an exception or exemption granted, CACDA stops short of concluding a violation of other agencies' rules. However, CACDA has not been dilatory in its investigation. All federal, state, and local agencies have been contacted, and their interpretation of their own rules sought.

The first layer of detail reflected in the chart below relates to "pure" G.O. 159 violations: (1) premature construction,<sup>3</sup> (2) premature operation, (3) complete absence of an advice letter, (4) delayed or wholly lacking permits or approvals (of any kind), and (5) temporary sites not within the general order's definition of temporary. Other types of G.O. 159 violations have occurred but in smaller amounts.

A second layer of detail is reported for potential violations concerning the "necessary permits or approvals" referenced in G.O. 159: Federal Communications Commission regulations, Federal Aviation Administration regulations, Bureau of Land Management requirements, Office of the State Architect approvals, and local controls (ordinances, conditional or temporary use permits, building permits and fees).

A third layer of major concern is potential misrepresentation, both to this Commission and other agencies. In every instance involving

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<sup>3</sup> Staff has in all instances excluded as "premature" those sites for which (1) construction began during the pendency of an advice letter, and (2) a letter of undertaking was filed. (G.O. 159, V(E)(3).)

a G.O. 159 violation, a misrepresentation has occurred, because all advice letters under G.O. 159 are signed under penalty of perjury. This interim report contains, with only a few noted exceptions, misrepresentations shown in written evidence. Additional misrepresentations in oral statements to this Commission or CACDA may have occurred, but are more appropriately the subject of hearings.

A fourth, miscellaneous category of discovered activities that are not G.O. 159 violations, but are excluded from this report, include: (1) failure to maintain an office with tariffs for public inspection (G.O. 96-A, VIII), (2) failure to report sub-tariff discounts to state agencies, particularly those with permitting authority (G.O. 96-A, X.D.), (3) misrepresentations in the Certificate of Public Convenience and Necessity process, and (4) potential violation of Rule 1 of the Commission's Rules of Practice and Procedure.

CHART

Name of Cellular Company	1. Construction prior to CPUC authorization	2. Operation prior to CPUC authorization	3. Existing sites for which no advice letter had been filed prior to the issuance of the OII	4. Sites without a required permit or approval required by G.O. 159, at the time of advice letter filing	5. Sites in operation without one or more required permits or approvals	6. Sites for which conflicting or inaccurate information was given to one or more government agencies	7. Number of sites reviewed for this report.
Bay Area Cellular Telephone Company (BACTC)	56	20	1	3	40	20	72
Los Angeles Cellular Telephone Company (LACTC)	41	39	2	15	13	41	41
GTE Mobilnet (GTE)	49	22	14		28	47	49
Los Angeles SMSA Limited Partnership (Pactel, LASLP)	96	5	14	22	47	10	127

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<b>Fresno Cellular Telephone Company (FCTC) - McCaw</b>	14	8		3	6	5	15
<b>Redding Cellular Partnership - McCaw</b>	5	3			3		3
<b>Stockton Cellular Telephone Company - McCaw</b>	13	1			7	4	17
<b>Santa Barbara Cellular Systems, Limited - McCaw</b>	2					1	2

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Salinas Cellular Telephone Company - McCaw	4	2			4		4
Napa Cellular Telephone Company - McCaw	4	3			3		4
Ventura Cellular Telephone Company - McCaw	6	1			4	1	7
Cagal Cellular Communications Corporation - McCaw	2	2			1		2

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US West Cellular of California, Inc. (US West)	2			1	1	2	2
Mountain Cellular/Atlantic Cellular	1	1		1	1	1	1
Sacramento Cellular Telephone Company - McCaw	33	10			15	13	38
Bakersfield Cellular Telephone Company (BCTC)	4	1			2	3	5

**Category:**

1. This includes cellular sites for which modification began prior to the resolution authorizing construction or letter of undertaking was filed.
2. This includes sites which operated prior to the resolution authorizing the site.
3. This includes cellular sites that were in existence prior to the issuance of the OII on January 10, 1992, and which should have filed an advice letter, but did not as of the start of this investigation. It also includes sites with modifications requiring an advice letter filing (i.e. a new tower, building, or addition of antennas), but did not file. Finally, it includes sites which were claimed to be under construction at the time of the issuance of G.O. 159, and therefore exempt, but evidence indicates modification began after issuance of G.O. 159.
4. This includes sites that lacked, at the time of advice letter filing, any required permit or approval.
5. This includes sites that began operation without any required permit or approval. This includes, among other things, lack of final site inspection, Certificate of Occupancy, and FCC form 489 filing. This does not include operating without CPUC authorization.
6. This includes sites in which false, inaccurate, or conflicting information was given to one or more government agencies. This includes (1) filing advice letters for proposed construction on sites for which construction has already begun, (2) filing applications for local permits with inaccurate information (e.g. incorrect valuation), (3) filing Form 489 with the FCC for a site and not (a) beginning service within 90 days or (b) notify the FCC that the site had not gone into service, (4) erroneous or differing information regarding the location or description of a cellular site, and (5) erroneous information given in the Appendix filings of this investigation.
7. This indicates the number of sites reviewed for this report. Sites for which modification began after January 10, 1992 were addressed by this report. Appendix A filings for sites which were modified between January 28, 1990 and March 28, 1990 were not included in this report.